

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM R. KERN,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 13-CV-0294-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary

judgment (ECF Nos. 17 and 19). Plaintiff is represented by Dana C. Madsen.

Defendant is represented by Franco L. Bacia. The Court has reviewed the

administrative record and the parties' completed briefing and is fully informed.

For the reasons discussed below, the Court grants Defendant's motion and denies

Plaintiff's motion.

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JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
13 impairment must be “of such severity that he is not only unable to do his previous
14 work[,] but cannot, considering his age, education, and work experience, engage in
15 any other kind of substantial gainful work which exists in the national economy.”
16 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
19 §§ 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R.
3 §§ 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
15 §§ 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
16 severe than one of the enumerated impairments, the Commissioner must find the
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R.
3 §§ 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of
4 the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R.
10 §§ 404.1520(f); 416.920(f). If the claimant is incapable of performing such work,
11 the analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant's age,
16 education and work experience. *Id.* If the claimant is capable of adjusting to other
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
18 §§ 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to
19 other work, the analysis concludes with a finding that the claimant is disabled and
20 is therefore entitled to benefits. *Id.*

The claimant bears the burden of proof at steps one through four above.

Lockwood v. Comm'r of Soc. Sec. Admin., 616 F.3d 1068, 1071 (9th Cir. 2010). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

ALJ'S FINDINGS

Plaintiff applied for disability insurance benefits and supplemental security income disability benefits on July 15, 2009, alleging a disability onset date of March 7, 2009. Tr. 146-55, 156-62. His claims were denied initially and upon reconsideration, Tr. 70-73, 78-82, 83-89, and Plaintiff requested a hearing, Tr. 90-91. Plaintiff appeared before an Administrative Law Judge (“ALJ”) on September 21, 2010. Tr. 24-65. The ALJ rendered a decision denying Plaintiff benefits on November 15, 2010. Tr. 7-23.

The ALJ found that Plaintiff met the insured status requirements of Title II of the Social Security Act through June 30, 2010. Tr. 12. At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since March 7, 2009, the alleged onset date. Tr. 12. At step two, the ALJ found that Plaintiff had the following severe impairments: coronary artery disease/myocardial infarction

1 post stenting and chronic obstructive pulmonary disease. Tr. 12-14. However, at
2 step three, the ALJ found that Plaintiff's severe impairments did not meet or
3 medically equal a listed impairment. Tr. 14. The ALJ then determined that
4 Plaintiff had the RFC to

5 perform medium work as defined in 20 CFR 404.1567(c) and
6 416.967(c) except that he must avoid extreme heat and cold, poorly
7 ventilated areas, and irritants such as fumes, odors, dust, chemicals,
and gases.

8 Tr. 15. At step four, the ALJ found that Plaintiff was capable of performing past
9 relevant work as a laborer, pot tender, masker and washer, washer, and survey
10 worker. Tr. 18. In light of the step four findings, the ALJ concluded that Plaintiff
11 was not disabled under the Social Security Act and denied his claims on that basis.
12 Tr. 19.

13 The Appeals Council denied Plaintiff's request for review on November 18,
14 2011, making the ALJ's decision the Commissioner's final decision for purposes
15 of judicial review. Tr. 1-6; 20 C.F.R. §§ 404.981, 416.1484, and 422.210.

16 ISSUES

17 Plaintiff seeks judicial review of the Commissioner's final decision denying
18 him disability insurance benefits under Title II of the Social Security Act and
19 supplemental security income under Title XVI of the Social Security Act. Plaintiff
20 generally asserts "the ALJ's decision is not supported by substantial evidence" and

1 he is “more limited from a psychological standpoint, as well as physically.” ECF
2 No. 17 at 9. From Plaintiff’s motion, the Court has discerned four issues for
3 review:

- 4 1. Whether the ALJ properly discredited Plaintiff’s credibility;
- 5 2. Whether the ALJ properly evaluated and weighed the opinions of
medical providers;
- 6 3. Whether the ALJ erred at step two when he concluded Plaintiff did not
suffer from severe mental impairments; and
- 7 4. Whether the ALJ’s RFC finding failed to incorporate the extent of
Plaintiff’s limitations.

9
10 *Id.* at 9-20.

11 **A. Adverse Credibility Determination**

12 In social security proceedings, a claimant must prove the existence of
13 physical or mental impairment with “medical evidence consisting of signs,
14 symptoms, and laboratory findings.” 20 C.F.R. §§ 416.908; 416.927. A
15 claimant’s statements about his or her symptoms alone will not suffice. 20 C.F.R.
16 §§ 416.908; 416.927. Once an impairment has been proven to exist, the claimant
17 need not offer further medical evidence to substantiate the alleged severity of his or
18 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).
19 As long as the impairment “could reasonably be expected to produce [the]
20 symptoms,” the claimant may offer a subjective evaluation as to the severity of the

1 impairment. *Id.* This rule recognizes that the severity of a claimant's symptoms
2 "cannot be objectively verified or measured." *Id.* at 347 (quotation and citation
3 omitted).

4 If an ALJ finds the claimant's subjective assessment unreliable, "the ALJ
5 must make a credibility determination with findings sufficiently specific to permit
6 [a reviewing] court to conclude that the ALJ did not arbitrarily discredit claimant's
7 testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). In making
8 this determination, the ALJ may consider, *inter alia*: (1) the claimant's reputation
9 for truthfulness; (2) inconsistencies in the claimant's testimony or between his
10 testimony and his conduct; (3) the claimant's daily living activities; (4) the
11 claimant's work record; and (5) testimony from physicians or third parties
12 concerning the nature, severity, and effect of the claimant's condition. *Id.* If there
13 is no evidence of malingering, the ALJ's reasons for discrediting the claimant's
14 testimony must be "specific, clear and convincing." *Chaudhry v. Astrue*, 688 F.3d
15 661, 672 (9th Cir. 2012) (quotation and citation omitted). The ALJ "must
16 specifically identify the testimony she or he finds not to be credible and must
17 explain what evidence undermines the testimony." *Holohan v. Massanari*, 246
18 F.3d 1195, 1208 (9th Cir. 2001).

19 Plaintiff contends the ALJ improperly discredited his credibility. ECF No.
20 17 at 9-12. Specifically, Plaintiff takes issue with the ALJ's characterization of the

1 objective medical evidence and assessment of Plaintiff's daily activities as proof
2 that Plaintiff's symptoms were not as severe as alleged. *Id.*

3 As an initial matter, the ALJ identified evidence in the record indicating that
4 Plaintiff was exaggerating his limitations. Tr. 15-16. The ALJ highlighted the
5 following:

6 The undersigned's finding, noted above, that the claimant is
7 exaggerating his problems and limitations is supported by the recent
8 psychiatric evaluation given by Dr. Pollack, which suggested that the
9 claimant had been exaggerating his difficulties or had an unusual
10 personal history. Dr. Pollack observed, "[the claimant's] clinical
scores reveal an individual who is very concerned about his physical
well-being. His complaints may take on a bizarre and delusional
nature. His fears may go beyond what is supported by his medical
records."

11 Tr. 16 (internal citations omitted). This evidence alone provided proper basis for
12 questioning the reliability of Plaintiff's statements. *See Lester v. Chater*, 81 F.3d
13 821, 834 (9th Cir. 1995) (noting that clear and convincing reasons for rejecting a
14 claimant's testimony are only necessary in the absence of affirmative evidence of
15 malingering).

16 In addition to this evidence of malingering, the ALJ provided specific, clear,
17 and convincing reasons supported by substantial evidence for finding Plaintiff's
18 statements "not credible to the extent they are inconsistent" with the RFC finding.
19 Tr. 15. First, the ALJ found that Plaintiff's statements concerning the severity of
20 his symptoms and limitations were inconsistent with the disabling symptoms and

1 limitations alleged. Tr. 15-16. In support, the ALJ highlighted the following:
2 although Plaintiff complained of debilitating cardiac issues, the objective evidence
3 showed that Plaintiff's condition has significantly improved and that he was able to
4 resume normal activities of daily living (Tr. 15-16, 239, 245, 271, 274, 328, 331-
5 35); similarly, although Plaintiff testified to severe pulmonary issues, the objective
6 medical evidence suggested only mild problems that were exacerbated by
7 continued tobacco use (Tr. 16, 364, 401, 406); and finally, a comprehensive look at
8 the entire medical record by Dr. Norman Staley of Disability Determination
9 Services concluded that Plaintiff's conditions were not as severe as alleged. Tr.
10 15-6, 18, 348-62. These inconsistencies between Plaintiff's alleged limitations and
11 the objective medical evidence provided a permissible and legitimate reason for
12 discounting Plaintiff's credibility. *Thomas*, 278 F.3d at 958.

13 Second, the ALJ found Plaintiff's description of his daily activities
14 inconsistent with the disabling symptoms and limitations alleged. Tr. 17. In
15 support, the ALJ highlighted the following:

16 [A]lthough the claimant describes significant physical limitations, his
17 daily activities undermine his allegations. The record indicates that he
18 regularly exercises by riding his bike once or twice a day. He rises at
19 six a.m., fixes breakfast for himself, feeds animals, and visits friends
20 or attends AA. He is able to perform household chores and assist an
uncle with garden chores.

1 Tr. 17. These inconsistencies between Plaintiff's alleged physical limitations and
2 his reported daily activities provided a permissible and legitimate reason for
3 discounting Plaintiff's credibility. *Thomas*, 278 F.3d at 958-59; *see also Orn v.*
4 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (finding that daily activities may be
5 relevant to an adverse credibility finding either because they contradict a
6 claimant's testimony or demonstrate abilities and skills that can easily transfer to a
7 workplace setting).

8 Accordingly, this Court concludes the ALJ did not err in discounting
9 Plaintiff's credibility.

10 **B. Medical Opinions**

11 There are three types of physicians: "(1) those who treat the claimant
12 (treating physicians); (2) those who examine but do not treat the claimant
13 (examining physicians); and (3) those who neither examine nor treat the claimant
14 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."

15 *Holohan*, 246 F.3d at 1201-02 (internal citations omitted). Generally, a treating
16 physician's opinion carries more weight than an examining physician's, and an
17 examining physician's opinion carries more weight than a reviewing physician's.

18 *Id.* In addition, the regulations give more weight to opinions that are explained
19 than to those that are not, and to the opinions of specialists concerning matters
20 relating to their specialty over that of nonspecialists. *Id.* (citations omitted). A

1 physician's opinion may be entitled to little if any weight, when it is an opinion on
2 a matter not related to her or his area of specialization. *Id.* at 1203, n.2 (citation
3 omitted).

4 A treating physician's opinions are entitled to substantial weight in social
5 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
6 (9th Cir.2009). If a treating or examining physician's opinion is uncontradicted, an
7 ALJ may reject it only by offering "clear and convincing reasons that are supported
8 by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
9 2005). "However, the ALJ need not accept the opinion of any physician, including
10 a treating physician, if that opinion is brief, conclusory and inadequately supported
11 by clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation omitted). "If
12 a treating or examining doctor's opinion is contradicted by another doctor's
13 opinion, an ALJ may only reject it by providing specific and legitimate reasons
14 that are supported by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing
15 *Lester*, 81 F.3d at 830-31). An ALJ may also reject a treating physician's opinion
16 which is "based to a large extent on a claimant's self-reports that have been
17 properly discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041
18 (9th Cir. 2008) (internal quotation and citation omitted).

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1 **1. Dr. Pollack**

2 Plaintiff contends the ALJ erred by failing to properly reject the opinion of
3 examining psychologist, Dr. Dennis Pollack. ECF No. 17 at 14. Plaintiff points to
4 Dr. Pollack's September 2010 evaluation in which he opined Plaintiff would have
5 marked limitations in two work-related areas: the ability to (1) perform activities
6 within a schedule, maintain regular attendance, and be punctual within customary
7 tolerances; and (2) complete a normal workday and workweek without
8 interruptions from psychologically based symptoms and perform at a consistent
9 pace without an unreasonable number and length of rest periods. *Id.*; Tr. 441.

10 This Court finds the ALJ properly considered and rejected the medical
11 opinion of Dr. Pollack. Tr. 13-14. Because the opinion of Dr. Pollack was
12 uncontradicted, the ALJ may reject only by offering "clear and convincing reasons
13 that are supported by substantial evidence." *Bayliss*, 427 F.3d at 1216.

14 The ALJ provided clear and convincing reasons for affording Dr. Pollack's
15 opinion only "little weight." Tr. 17. First, the ALJ found inconsistencies within
16 Dr. Pollack's reports. Tr. 17-18. Although Dr. Pollack ultimately found Plaintiff
17 cognitively impaired, he also noted the following: (1) Plaintiff's understanding and
18 memory are only marginally impaired; (2) Plaintiff's intelligence is in the low
19 average range; and (3) Plaintiff has no impairment in his ability to remember work
20 locations or procedures and understand short and simple instructions. Tr. 17, 440.

1 Because the ALJ need not accept a medical opinion that is “inadequately supported
2 by clinical findings,” *Bray*, 554 F.3d at 1228, the ALJ provided a clear and
3 convincing reason for rejecting Dr. Pollack’s opinion.

4 Second, the ALJ noted that Dr. Pollack’s report was “largely based” on the
5 Plaintiff’s subjective statements. Tr. 17. As explained above, the ALJ determined
6 Plaintiff’s self-reporting was not credible. Specific to this examination, the ALJ
7 noted several reasons to discount the reliability of the examination based on
8 Plaintiff’s subjective statements. For one, the ALJ noted Plaintiff’s moderately
9 elevated F-scale score, which can indicate the taker is contradicting himself or
10 trying to present himself in a different light. Tr. 17, 437. Further, Plaintiff initially
11 failed to report any mental impairments on his disability report and failed to
12 mention at the administrative review hearing any of the mental problems identified
13 by Dr. Pollack. Tr. 17-18. Because the ALJ need not accept a medical opinion
14 based on a claimant’s non-credible self-reporting, *Tomasetti*, 533 F.3d at 1041, the
15 ALJ properly rejected this diagnosis.

16 Third, the ALJ noted that Dr. Pollack’s report was conclusory, offering little
17 explanation of how Dr. Pollack reached his conclusions. Tr. 18. As an example,
18 the ALJ points to Dr. Pollack’s lack of explanation for his diagnosis of personality
19 disorder. Tr. 18, 439. Because the ALJ need not accept a medical opinion that is
20 “brief, conclusory, and inadequately supported by clinical findings,” *Bray*, 554

1 F.3d at 1228, the ALJ provided another clear and convincing reason for rejecting
2 Dr. Pollack's opinion.

3 Finally, the ALJ questioned the reliability of Dr. Pollack's report because
4 Plaintiff's attorney referred him to Dr. Pollack. Tr. 18. While the ALJ noted that
5 this reason alone was insufficient to invalidate a report, he highlighted that
6 "claimant underwent the examination to generate evidence for this case, rather than
7 for treatment of the alleged symptoms." Tr. 18. As the Ninth Circuit has clarified,
8 "*in the absence of other evidence* to undermine the credibility of a medical report,
9 the purpose for which the report was obtained does not provide a legitimate basis
10 for rejecting it." *Reddick v. Chater*, 157 F.3d 715, 726 (9th Cir. 1998) (emphasis
11 added). Here, because the ALJ noted this reason for undermining the credibility of
12 Dr. Pollack's report was bolstered by the reasons identified above, this Court does
13 not find error.

14 Accordingly, the ALJ did not err in rejecting Dr. Pollack's opinion.

15 **2. Dr. Lahtinen**

16 Plaintiff next contends the ALJ improperly rejected the opinion of Dr.
17 Duncan Lahtinen, Plaintiff's treating physician. ECF No. 17 at 18-20.
18 Specifically, Plaintiff points to Dr. Lahtinen's June 2009 evaluation in which he
19 opined Plaintiff would be limited to sedentary work activities due to his medical
20 problems. *Id.* at 18, Tr. 327-30.

1 This Court finds that the ALJ properly weighed and rejected the medical
2 opinion of Dr. Lahtinen. Because Dr. Lahtinen's opinion was contradicted, *see* Tr.
3 15-18 (noting other medical evidence, including Dr. Lahtinen's own observations,
4 which suggested Plaintiff *increase* activity, rather than limit his activity to
5 sedentary activity), the ALJ need only have given specific and legitimate reasoning
6 supported by substantial evidence to reject it. *Bayliss*, 427 F.3d at 1216.

7 The ALJ provided specific and legitimate reasoning supported by substantial
8 evidence for assigning only "little weight" to Dr. Lahtinen's opinion. In rejecting
9 Dr. Lahtinen's opinion, the ALJ noted Dr. Lahtinen's assessment was inconsistent
10 with the objective medical evidence, including Dr. Lahtinen's own reports. Tr. 17.

11 Dr. Lahtinen estimates that the claimant's cardiac and pulmonary
12 problems cause "marked" interference with his ability to walk, lift and
carry. However, the undersigned rejects Dr. Lahtinen's assessment as
13 inconsistent with the objective evidence, detailed above, including Dr.
14 Lahtinen's own observations and reports. As discussed, Dr. Lahtinen
15 found that the claimant had a "good" response to the stent placement.
16 He also noted during a September 2009 appointment that the
claimant's lungs were clear. Significantly, during one visit, Dr.
17 Lahtinen advised the claimant to increase his activity. Furthermore,
18 Dr. Lahtinen's opinion is limited in duration. He estimates that the
claimant's work limitations will continue for six months if the
19 claimant does not undergo therapy and rehabilitation for his
alcoholism. However, the record indicates that the claimant is getting
treatment for his alcoholism. Because Dr. Lahtinen's assessment
contradicts the objective medical evidence in the record, including his
own observations, the undersigned has given little weight to his
opinion.

1 Tr. 17. Because inconsistencies between a doctor's opinion and his other reports,
2 as well as other objective evidence, provide specific and legitimate reasoning for
3 rejecting even a treating doctor's opinion, *see Bayliss*, 427 F.3d at 1216 (finding a
4 discrepancy between a doctor's opinion and his other recorded observations and
5 opinions provided a clear and convincing reason for not relying on that doctor's
6 opinion), the ALJ properly rejected Dr. Lahtinen's opinion.

7 **C. Severe Mental Impairment at Step Two**

8 Plaintiff bears the burden to establish the existence of a severe impairment
9 or combination of impairments, which prevent him from performing substantial
10 gainful activity, and that the impairment or combination of impairments lasted for
11 at least twelve continuous months. 20 C.F.R. §§ 404.1505, 404.1512; 416.905,
12 416.912; *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001). An
13 impairment, to be considered severe, must significantly limit an individual's ability
14 to perform basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c); *Smolen v.*
15 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). An impairment that is "not severe"
16 must be a slight abnormality (or a combination of slight abnormalities) that has no
17 more than a minimal effect on the ability to do basic work activities. SSR 96-3P,
18 1996 WL 374181. Basic work activities include "abilities and aptitudes necessary
19 to do most jobs, including, for example, walking, standing, sitting, lifting, pushing,
20 pulling, reaching, carrying or handling." 20 C.F.R. § 404.1521(b).

1 A physical or mental impairment is one that “results from anatomical,
2 physiological, or psychological abnormalities which are demonstrable by
3 medically acceptable clinical and laboratory diagnostic techniques.” 42 U.S.C. §§
4 423(d)(3), 1382c(a)(3)(D). An impairment must be established by medical
5 evidence consisting of signs, symptoms, and laboratory findings, and “under no
6 circumstances may the existence of an impairment be established on the basis of
7 symptoms alone.” *Ukolov v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005) (citing
8 SSR 96-4p, 1996 WL 374187 (July 2, 1996)) (defining “symptoms” as an
9 “individuals own perception or description of the impact of” the impairment).

10 Plaintiff contends the ALJ erred in his step two analysis when he concluded
11 Plaintiff did not have severe mental impairments. ECF No. 17 at 12-18. In
12 support, Plaintiff points to Dr. Pollack’s September 2010 evaluation. *Id.* 13-14.

13 This Court finds the ALJ’s severe impairment analysis at step two was not
14 flawed. Dr. Pollack was the only doctor to perform a psychological evaluation and
15 opine that Plaintiff suffered from severe mental impairments.¹ Tr. 441. As noted

16 ¹ Plaintiff cites to a letter from Dr. Lahtinen, addressed to Plaintiff’s counsel, in an
17 effort to demonstrate that Dr. Pollack was not the only doctor to provide an opinion
18 regarding the severity of his mental limitations. ECF No. 21 at 6. In his letter, Dr.
19 Lahtinen briefly states the following: “I have reviewed and agree with Dr.
20 Pollack’s recommendations regarding [Plaintiff’s] physiological issues.” Tr. 477.

1 above, the ALJ properly rejected Dr. Pollack's opinion, in part because it was
2 largely based on Plaintiff's subjective reporting. To constitute a severe
3 impairment, the impairment must result from "anatomical, physiological, or
4 psychological abnormalities which are demonstrable by medically acceptable
5 clinical and laboratory diagnostic techniques," not Plaintiff's subjective self-
6 reporting. 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D); *Ukolov*, 420 F.3d at 1005.
7 Plaintiff has failed to meet his burden to establish that his mental impairments are
8 "severe." Therefore, no error has been shown.

9 **D. Challenge to ALJ's RFC Finding**

10 Plaintiff's final contention is that the ALJ's RFC is legally deficient because
11 the ALJ failed to incorporate the full extent of Plaintiff's physical limitations. ECF
12 No. 17 at 18-20. This argument is derivative of Plaintiff's argument concerning
13 the ALJ's rejection of Dr. Lahtinen's medical opinion. Given that the ALJ
14 properly rejected this evidence, no error has been shown. Further, the ALJ
15 properly considered Plaintiff's symptoms, limitations, and the objective and
16 opinion evidence in her RFC assessment and his conclusion is supported by
17 substantial evidence. *See* Tr. 15-18, 239, 245, 269, 271, 274, 316, 328, 331-35,
18 362-64, 35. Therefore, no error has been shown.

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1 **Accordingly, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 17) is **DENIED**.

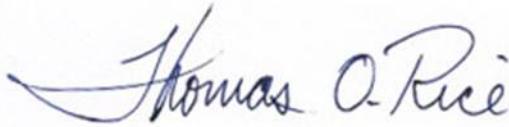
3 2. Defendant's Motion for Summary Judgment (ECF No. 19) is

4 **GRANTED.**

5 The District Court Executive is hereby directed to file this Order, enter

6 **JUDGMENT** for **DEFENDANT**, provide copies to counsel, and **CLOSE** this file.

7 **DATED** October 8, 2014.



Thomas O. Rice
THOMAS O. RICE
United States District Judge